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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,838	01/25/2002	Shan L. Brooks	7138-1	3405
7590 08/11/2004			EXAMINER	
Akerman, Senterfitt & Eidson, P.A. Post Office Box 3188 West Palm Beach, FL 33402-3188			PANTUCK, BRADFORD C	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/056,838

**Applicant(s)**

BROOKS, SHAN L.

**Examiner**

Bradford C Pantuck

**Art Unit**

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05/03/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 3-8 and 16-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 8, 16-21, and 23 is/are rejected.
- 7) ☒ Claim(s) 6, 7, and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,181,280 to Zachry, Jr. Regarding Claims 1, 16, and 17, Zachry discloses a strap (60) and a clamp (20) for selectively engaging the strap [this action is best shown in Figure 4]. Continuing to look at Figure 4, as the user pulls the end of strap (colored yellow) in direction A [see Attachment #1], the strap will slide through the clamp substantially freely. However, if the user pulls on the other end of the strap (colored blue) in direction B, the strap will be prevented from passing through the clamp in a direction towards the clamp. Now with reference to Figure 1, it is apparent that there is another securing clamp (or other means for securing) (10) associated with the strap (60). "Strap retainer" (10) secures the strap to the goggles (50) [Column 2, lines 55-58; see also column 3, line 64-column 4, line 24].

When the user pulls on strap (60), the tension force will increase at both the securing structure (10) and the clamp (20) [Newton's second law: "For every action, there is an equal and opposite reaction."]. Both are completely

secure. Such a force would be applied when the user puts the goggles on her head, or when the user puts the goggles around her arm to act as a tourniquet.

2. Further regarding claim 16, Zachry's tourniquet has a securing structure (10) attached to the strap as shown in Fig. 2. Securing structure (10) has a base (54) which comprises four bars attached in a rectangular configuration, as is clearly evident from Fig. 2. The strap is attached to the base via securing structure (10).
3. Claims 8 and 23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,181,280 to Zachry. The strap (60) is certainly made of a flexible material, as with all goggles of this type, so that the user can stretch the strap around the back of his or her head. There are many different materials used for such a purpose including rubbers and plastics, which are all flexible and stretchable like the strap in U.S. Patent No. 3,605,204 to Amundsen [see Column 2, lines 17-19]. In Figure 1 it is evident that the strap is a "webbing," of some sort, having a network/texture.
4. Claims 1 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,670,946 to Olivieri. Regarding Claims 1 and 17, Olivieri does not explicitly disclose a device intended to be a tourniquet. However, he does disclose a strap (1), clamp assembly (13) [Column 2, lines 40-44], and securing structure (lever system 1/2/3/4) [Fig. 2], in accordance with the particulars of the applicant's claimed invention.

To begin, Olivieri's invention is intended for use with a roller skate, ski boot, or similar sporting equipment in which significant *tightening of a boot around a human limb is necessary* [Column 1, lines 4-15]. In the just recited passage, he refers to his invention as a "tensioning assembly." Thus, were someone to gash one's foot, Olivieri's device tensioning device in tandem with the boot could be used as a tourniquet system around the ankle in order to limit blood loss through the foot.

As anyone who skis or uses in-line skates is well-aware, Olivieri's clamp (13) will allow strap (1) to pass through in the direction away from the securing structure (1/2/3/4), but will disallow the strap from retreating back towards the securing structure (unless the user lifts lever 22 as shown in Fig. 2) [Column 3, lines 33-38].

Olivieri discloses a securing structure that further secures the strap (1) when the clamp (13) engages the strap [Column 3, lines 30-33].

5. Regarding Claim 16, Olivieri discloses a securing structure attached to the strap at joint (8) [Figures 2 and 3]. The securing structure has a base (3). Component (2a) of Olivieri's invention is a bar (long, solid component) and the strap (1) is attached to bar (2a) at pin (8) [Fig. 3].

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3731

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 5, 18, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,670,946 to Olivieri. Regarding Claims 3 and 18, and with reference to Figure 3, Olivieri discloses a securing structure having a cover (2) with a pin (8 and 9). Olivieri discloses a base (3) with an aperture (11) for receiving the cover pin (9a). Olivieri further discloses a traveling arm (4) rotatably coupled to the cover with a pin. However, the pin (8/9) is on the cover (2), rather than on the traveling arm (4) and the aperture (6/7) is in the traveling arm, rather than on the cover. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to put the pin (8/9) on the traveling arm and have the aperture be on the cover, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art.
7. Regarding Claim 5 and 20, the modified Olivieri system now has holes through arms (2a) and (2b) to receive the pin that is now in the position of holes (6 & 7) in the traveling arm. The hole in one of these arms is the aforementioned aperture and the other hole is "an opening for receiving a projection for lifting" the cover. The traveling arm has a slot at its distal end (located between arms 2a and 2b).
8. Regarding Claim 21, traveling arm (4) comprises a second securing bar (5) [Fig. 3].

9. Claims 4 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,670,946 to Olivieri in view of U.S. Patent No. 6,311,372 to Wang. Olivieri discloses the invention as claimed, but does not have a lock for securing the cover and the traveling arm to the base. However, Wang discloses another buckle for skates and teaches that one should provide a lock (25 locks with 26 in Fig. 3) for such a lever system so that the securing structure is not unintentionally loosened [Column 1, line 35]. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide a lock for securing the cover and traveling arm to the base, in order to make sure that the securing system stays tight during use, as taught by Wang.

10. Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,451,234 to Wassermann in view of U.S. Patent No. 4,670,946 to Olivieri. Wasserman discloses a tourniquet system, including a flexible strap (2) made out of a flexible nylon material [Column 5, lines 35-55]. Wasserman discloses a fastening means (5), but the fastening means does not include a clamp or a securing structure.

However, Olivieri discloses a fastening means also intended to be used as a means of securing a band around a person's limb. Olivieri's fastening means includes both a clamp (13) and a securing structure (1/2/3/4), as explained above. His fastening means provides mechanical advantage, because it includes a "second class" lever as a part of its securing structure

[Column 1, lines 15-24]. Such mechanical advantage *would make it easier for a user to tighten such a device* about a person's leg using only one hand.

Olivieri's system is also incrementally adjustable, i.e. the user can determine how much to compress the leg to a very specific degree. This is because Olivieri's leg-compressing system includes a strap (1) with serrations.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to replace the fastening system of Wasserman with the fastening system of Olivieri in order to make tightening the band around a limb mechanically easier (less work) and to make the fastener incrementally adjustable, as taught by Olivieri.

#### ***Allowable Subject Matter***

11. Claims 6, 7, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

12. Applicant's arguments regarding U.S. Patent No. 5,181,280 to Zachry, Jr. filed May 3, 2004 have been fully considered but they are not persuasive. On pages 6 and 7 of "Remarks", Applicant argues that Zachry does not disclose a securing structure capable of further securing the clamp to the strap. Examiner disagrees. Clamp 20 includes members 23 and 24b and squeezes the strap 60 between these two parts. It is quite lucid from Figure 2 that there



is another clamp 10, which *further secures* the strap 60 *while clamp 20 is securing the strap*. Second clamp 10 can be called a “securing structure.”

This second clamp 10 attaches the strap 60 to the goggles, the goggles being attached to the first clamp 20.

Therefore, the strap is doubly secured (“further secured”) to clamp 20—at the point of contact of the strap inside clamp 20, and at securing structure 10.

13. Applicant's arguments regarding U.S. Patent No. 4,670,946 to Olivieri filed May 3, 2004 have been fully considered but they are not persuasive. Applicant argues that the securing structure (2,3,4) of Olivieri “further tightens the strap, not further securing the strap.” Further, Applicant argues that “lever 2 does not further tighten the strap to the clamp as the clamp simply permits the strap to move...” [bottom of page 7 of “Remarks”]. Examiner contends that securing structure (2,3,4) does in fact secure/tighten the strap. When the user pushes lever 2 (see Fig. 2), the strap (which has already been secured to the clamp 13 on the upper right side of the Figure) is further secured to the users leg. One could also say that the strap is further tightened or pulled taut. After the user depresses lever 2, the whole system (strap and clamp) will be more secure and will be less likely to be sticking out flapping in the wind.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone

Art Unit: 3731

number is (703) 305-8621. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaver or McDermott can be reached on (703) 308-0858. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*BCP*  
BCP

August 5, 2004



DAVID O. REIP  
PRIMARY EXAMINER